

1
2
3
4
5
6
7
8 **UNITED STATES DISTRICT COURT**
9 **WESTERN DISTRICT OF WASHINGTON**
10 **AT TACOMA**

11 CELERINO CARRASCO,

12 Plaintiff,

13 v.

14 UNITED STATES GOVERNMENT,
15 DEPARTMENT OF HOMELAND
16 SECURITY, *et al.*,

17 Defendants.

18 Case No. C06-5104RJB

19 **REPORT AND**
20 **RECOMMENDATION**

21 Noted for December 22, 2006

22 This matter is before the court on plaintiff's failure to submit a response to the court's order to
23 show cause. After carefully reviewing the record, the undersigned recommends that the case be dismissed
24 for lack of prosecution.

25 The complaint in this matter was submitted on or about February 15, 2006, along with an
26 application to proceed in forma pauperis. At that time Plaintiff was in custody of the Immigration and
27 Customs Enforcement ("ICE") agency at the Northwest Detention Center in Tacoma. The record reflects
28 that Plaintiff not been in custody of the ICE since February 28, 2006, when he was deported to Mexico.
Based on his release, Plaintiff filed an updated application to proceed in forma pauperis as directed by the
court and the court granted the application on June 22, 2006. The Complaint was technically filed by the
clerk on the following day, June 23, 2006. According to Rule 4(m) of the Federal Rules of Civil
Procedure, plaintiff was required to properly serve defendants with a copy of the original complaint along

1 with a summons and file the required proof of service by not later than October 24, 2006.

2 On October 30, the undersigned reviewed the record and noted defendants had not filed an answer
3 to Complaint. On further review the court found plaintiff had not filed proof of service of the original
4 complaint or summonses. Accordingly, it appeared plaintiff had not properly served the complaint in this
5 matter. The court directed Plaintiff to file proof of service or show cause why this matter should not be
6 dismissed for lack of prosecution by not later than November 22, 2006. The court has not received the
7 required proof of service, or any other response or pleadings from plaintiff in this matter.

8 Based on the court record and the facts described above, the Court should dismiss Plaintiff's causes
9 of action without prejudice for failure to prosecute. Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of
10 the Federal Rules of Civil Procedure, the parties shall have ten (10) days from service of this Report to file
11 written objections. *See also* Fed.R.Civ.P. 6. Failure to file objections will result in a waiver of those
12 objections for purposes of appeal. Thomas v. Arn, 474 U.S. 140 (1985). Accommodating the time limit
13 imposed by Rule 72(b), the clerk is directed to set the matter for consideration on **December 22, 2006**, as
14 noted in the caption.

15 DATED this 30th day of November, 2006.

16 _____
17 /s/ J. Kelley Arnold
18 J. Kelley Arnold
19 United States Magistrate Judge
20
21
22
23
24
25
26
27
28